

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARLENE JOHNSON, HELENA	:	CIVIL ACTION
LOVE and BONNY BLEACHER,	:	
on behalf of themselves and	:	
all others similarly situated	:	
	:	
v.	:	
	:	
ADVANCE AMERICA, et al.	:	NO. 07-cv-03142-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 5, 2008

Plaintiffs have brought this action, on behalf of themselves and others similarly situated, asserting claims under a Pennsylvania usury statute. The defendants sought to compel plaintiffs to arbitrate their claims, on the basis of written agreements in which each of them agreed to arbitrate their claims, and also agreed to waive their right to seek relief in a collective action. Stated otherwise, the plaintiffs entered into agreements that they would not seek class relief, and that their claims must be arbitrated.

The defendants sought to compel arbitration. Plaintiffs asserted that their agreements to arbitrate and to waive class relief were unconscionable and unenforceable.

By Order dated January 2, 2008, I granted the defendants' motion to compel arbitration, in reliance upon the recent decision of the Third Circuit Court of Appeals in Gay v. CreditInform, 2007 WL 4410362 (3d Cir. Dec. 19, 2007).

In their briefs in support of their motion to compel arbitration, the defendants had argued that the question of whether the arbitration should proceed on an individual basis or on a class basis should be resolved by the arbitrator. Accordingly, in the Order granting defendants' motion, I provided "Plaintiffs shall submit their claims to arbitration on an individual basis, unless the arbitrator determines otherwise."

Plaintiffs thereupon filed a motion for leave to pursue an interlocutory appeal of the Court's Order compelling arbitration. Before responding to that motion, the defendants filed a notice of appeal from the January 8 Order, on the theory that, since it left open the possibility that the arbitration might be pursued on a class-wide basis, my Order was the equivalent of denying the motion to compel arbitration.

In their subsequently-filed response to plaintiffs' motion for leave to appeal, defendants take the interesting position that, since they have already filed a notice of appeal, this Court lacks jurisdiction to grant plaintiffs' motion.

I start with the proposition that, under the pertinent statute, 9 U.S.C. § 16, there is an absolute right to file an interlocutory appeal from any order refusing to compel arbitration, or refusing to stay further proceedings until arbitration is completed, but there is no right to appeal from an order compelling arbitration (unless, of course, the District

Court authorizes an interlocutory appeal pursuant to 28 U.S.C. § 1292(b)).

In view of the foregoing, I conclude that there is at least enough doubt as to whether the defendants' notice of appeal can be regarded as depriving this Court of jurisdiction in the case to create a substantial likelihood that defendants' appeal would be dismissed by the Third Circuit Court of Appeals for lack of appellate jurisdiction. On the other hand, if the Court of Appeals does not reject the defendants' appeal, that Court would presumably entertain a cross-appeal by plaintiff, asserting that this Court erred in compelling arbitration, but also erred further in not insisting upon class-wide arbitration.

It seems obvious that all of these issues are important to the proper resolution of this litigation on its merits, and that an interlocutory resolution of these issues by the Court of Appeals would be helpful in expediting a correct outcome. I therefore conclude that both sides should be authorized to pursue an interlocutory appeal, and that it is unnecessary to reach a firm conclusion as to whether such permission is actually necessary.

An Order to that effect follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARLENE JOHNSON, HELENA	:	CIVIL ACTION
LOVE and BONNY BLEACHER,	:	
on behalf of themselves and	:	
all others similarly situated	:	
	:	
v.	:	
	:	
ADVANCE AMERICA, et al.	:	NO. 07-cv-03142-JF

ORDER

AND NOW, this 5th day of May, 2008, IT IS ORDERED:

1. That plaintiffs and defendants are all authorized to pursue interlocutory appeals from this Court's Order dated January 2, 2008.

2. The defendants' notice of appeal dated April 23, 2008 is deemed to have been filed with this Court's consent. Plaintiffs may file their notice of appeal within ten days.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.